

# SAN JOAQUIN RIVER EXCHANGE CONTRACTORS WATER AUTHORITY

*Consisting of 240,000 acres on the Westside of the San Joaquin Valley*

September 20, 1999

**JAMES E. O'BANION**  
Chairman

**JOHN B. BRITTON**  
Vice Chairman

**STEVE CHEDESTER**  
Executive Director

**JOE SCOTT**  
Water Resources Specialist

**SHELLEY STAUFFER**  
Administrative Assistant

**MINASIAN, SPRUANCE, BABER,  
MEITH, SOARES & SEXTON LLP**  
Legal Counsel

CalFed Bay-Delta Program  
1416 Ninth Street, Suite 1155  
Sacramento, California 95814

Re: Comments of the San Joaquin River Exchange Contractors and its Member  
Entities to the June 1999 CalFed Bay-Delta Second Draft Programmatic  
EIS/EIR

Ladies and Gentlemen:

**Central California  
Irrigation District**

**JAMES E. O'BANION**  
President

**CHRISTOPHER WHITE**  
General Manager

The San Joaquin River Exchange Contractors (Exchange Contractors) and its member entities Central California Irrigation District, San Luis Canal Company, Firebaugh Canal Water District and Columbia Canal Company submit their comments to the June 1999 CalFed Bay-Delta Second Draft Programmatic EIS/EIR.

## WHO ARE THE EXCHANGE CONTRACTORS

### San Luis Canal Company

**JACK THRELKELD**  
President

**ROBERT E. CAPEHART**  
General Manager

**Firebaugh Canal  
Water District**

**JOHN B. BRITTON**  
President

**JEFF BRYANT**  
General Manager

**Columbia Canal  
Company**

**DARRELL VINCENT**  
President

**DAVID WOOLLEY**  
General Manager

The Exchange Contractors have a long history (from the 1800's) of farming. They are comprised of family farms with the average farm size being about 100 acres. The growers who farm the Exchange Contractors' service area contribute, on average, \$400 million dollars annually to the local and state economy (attachments I and II).

The service area of the Exchange Contractors consists of 240,000 acres of prime farmland on the west side of the San Joaquin River. This service area provides the economic base for the cities of Mendota, Firebaugh, Dos Palos, Los Banos, Gustine and Newman. Agriculture is the basis for economic survival within this service area. Agriculture is the way of life; a reliable supply of good quality surface water is our lifeblood.

We serve water to farm land between Crows Landing in the north and Mendota in the south with all but approximately 16,000 acres lying on the west side of the San Joaquin River. The water rights of the Exchange Contractors arise from pre-1914 and riparian diversions made from the San Joaquin River and the North Fork of the Kings River at Mendota Pool and downstream at Sack Dam. Water was diverted through a series of canals running in a northerly direction, which were constructed as early as 1880. When the Friant Division of the Central Valley Project (CVP) was planned, the Bureau recognized that no extensive development could occur on the

P. O. Box 2115  
Los Banos, California  
93635  
(209) 827-8616  
Fax (209) 827-9703

east side of the San Joaquin valley in the area between Fresno and Bakersfield unless water could be diverted from the San Joaquin River and transported in a southerly direction.

The plan to provide the Exchange Contractors with Sacramento River water in order to develop the CVP and its Friant Division was first announced before World War II. The landowners and water agencies which now form the Exchange Contractors and Grassland areas were asked to first quantify their rights and then agreed, in the first Exchange Contract which was executed in 1939, to an exchange of waters under specified conditions. The Exchange Contract guaranteed deliveries of specified quantities of water and the timing of those deliveries from the Delta-Mendota Canal (DMC), and guaranteed that the quality of the water, although not as good as San Joaquin River water, would meet reasonable irrigation standards. The Exchange Contract provided that if substitute water was not delivered from the DMC or other CVP facilities, water from the San Joaquin River, to which the Exchange Contractors retained pre-1914 right, would be released at Friant Dam to the Exchange Contractors.

Friant Dam was completed in 1942. Millerton Reservoir, which is formed behind the dam, and the Madera and Friant-Kern Canals, made possible the diversion of San Joaquin River water to prime agricultural land on the east side of the San Joaquin valley.

The current Exchange Contract between the Bureau and the Exchange Contractors (Second Amended Contract for Exchange of Waters, Ilr-1144, February 14, 1968) provides up to 840,000 acre feet of water according to a specific schedule in normal water years. The Exchange Contract provides approximately a 75 percent water supply in dry years.

### GENERAL COMMENTS

Agriculture can not continue to meet all of California's new water needs in the future. Our population is growing by leaps and bounds. In the long-term, we must recognize that new water must be developed to meet increasing demands. But, beyond merely recognizing the need for additional developed water, we must have the courage to act now to unite agriculture, urban and environmental stakeholders during this period when we must focus and make critical decisions, which will take California into the twenty first century. CalFed must act as a leader, and not merely as a player who refuses to take a stand and upset the status quo. We must act to secure the funds needed for water storage, delivery and drainage infrastructure, and, putting aside rhetoric, bickering, and divisiveness, get the job done.

- \* The Exchange Contract service area is a unique area containing multiple groundwater and surface water supplies. The CalFed Program must recognize that water transfers, although a means of assisting California with this water supply problem, are only a Band-Aid. We know that CalFed wants areas such as the Exchange Contract service area to support a conjunctive use program. We are pleased to inform you that we actively do so; in fact, through tiered water pricing and financial incentive programs, the Exchange Contractors actively manage their surface and groundwater resources. In return, we expect a commitment from CalFed to

build on-stream or off-stream water storage facilities, north or south of the Delta, preferably both.

What we need are targets, timelines, milestones and goals. What we get is an EIS/EIR which is so general that it is not very helpful as a decision making tool for specific situations. CalFed readily acknowledges that specific solutions will require more specific EIS/EIRs. These comments then are not site-specific because the '99 CalFed EIS/EIR addresses a program level and not a site-specific level. Our comments, then, are directed to areas of interest and concern to the Exchange Contractors. As CalFed continues throughout the completion of Stage 2 and the implementation process in Stage 3 we will comment on site-specific programs developed by CalFed which impact the Exchange Contractors.

The CalFed EIS/EIR does not address (1) causation for the Bay-Delta problem and, (2) the cost associated with fixing the problem. We do find a general estimate of current costs in a sum in excess of \$5 billion.

#### **Causation of Bay-Delta Decline**

There is nothing in the CalFed Executive Summary, or in the more than 4,700 pages of supporting documents, which discusses the cause of the Delta's problems or the cost of fixing the problems. Since CalFed describes the purpose of its program as developing and implementing a long-term plan to restore ecological health and improve water management for beneficial uses within the Bay-Delta system, at some point in time CalFed needs to discuss the causation factor in order to determine the responsibility for program costs, whether those costs be defined in monetary or water terms. This critical concept needs to be recognized and debated in order to develop a meaningful and cost-efficient remedy for the Bay-Delta estuary.

CalFed can not develop a fix for the Delta without analyzing the cause of the Delta's problems. The Delta Tributary Agencies Committee (DTAC), of which the Exchange Contractors are members, commented before the California Water Resources Control Board on the decline of fish and wildlife resources in the Bay Delta estuary five years ago. Many other agencies have expressed similar comments on the cause of the Bay Delta decline.

A large portion of the problems facing the Delta is that key elements of the system envisioned by CVP designers have never been implemented. Two key elements are the out of valley drain and the cross Delta facility.

\*The out of valley drain would improve river and delta water quality and enhance environmental, agriculture and urban beneficial uses within and upstream of the Delta; and stabilize water supplies.

A large part of the Delta fix is not discovering a new system or approach or re-allocation, but, simply, to complete the construction of the elements envisioned by the Central Valley and State Water projects which were planned at inception to mitigate their expected impacts.

Another cause of Bay-Delta ecosystem decline not analyzed by CalFed is the rapidly expanding urban growth within the five California counties comprising the Bay-Delta system.

### **Cost to Remedy Bay-Delta Decline**

The cost of the CalFed Bay-Delta Program was stated in your March 1998 documents to:

"Be affordable: solutions will be implementable and maintainable within the foreseeable resources of the program and stakeholders."  
(Executive Summary for the '98 CalFed EIS/EIR).

CalFed's 1999 Revised Phase II Report discusses the finance plan and comes up with the philosophy that the beneficiary pays. If CalFed suggests that the beneficiary pays then this causation neutral analysis simply will not work if the beneficiary thinks that he/she/it is not the cause of the problem. At some point, CalFed has to confront the cause of the problem and develop a linkage towards payment, particularly when the total cost of completing Stage 1 is estimated to be more than \$5 billion and even suggests legislation to develop water user fees and required methods of water measurement throughout California. CalFed must tell us who is the beneficiary of the CalFed action. Is it a California farmer? Is it a water user? Is it a water diverter? Is it the 34 million plus people now living in California, consuming food products and enjoying the aesthetics of environmental in-stream use? Is it a fisherman? Who will pay this fee/tax?

### **SUMMARY OF EXCHANGE CONTRACTORS' COMMENTS**

The Exchange Contractors and its member entities will direct specific comments to the following areas of the '99 CalFed EIS/EIR.

1. Water Transfers;
2. Water Rights; and,
3. Estimated CalFed Stage 1 Costs.

#### **1. WATER TRANSFERS**

The water transfer policy explained in CalFed's June 1999 Water Transfer Booklet is a no-transfer policy. Every potential water transfer will be buried under red tape with the additional burden of proving that the transfer does not produce the same impacts as a worst case transfer, out of basin, across the Delta, and across the state.

The fact is that each transfer proposal should stand-alone and be considered on an individual basis. Water transfer proposals which are put together by local knowledgeable individuals should be scrutinized by other local knowledgeable individuals. For example, the rules which have been developed by the Exchange Contractors to analyze each water transfer proposal

1062(5)

provides the means, when coupled with existing NEPA/CEQA processes, to provide decision makers with the data needed to approve, approve with conditions, or disapprove a transfer proposal. Creation of another bureaucracy which, at best, stalls or stops the process, and, at worst, uses the wrong yardstick to measure the wrong local condition and impacts which kills the project, does nothing to help develop water transfers.

The CalFed water transfer element is merely a discussion of existing water transfer law and policy, both state and federal. It also identifies issues, which are unresolved and solution options which will require significant work and development by CalFed and the legislature over the next seven years. There is, however, the development of new bureaucracy, a water transfer information clearing house, which would, according to CalFed, supposedly facilitate water transfers by performing data collection and establishing a technical baseline analysis for each transfer.

The Exchange Contractors oppose the concept of another government-initiated bureaucracy to perform redundant tasks, which are already required by existing law. The state clearinghouse proposal even oversteps the authority granted in 1999 by the California legislature. The water transfer clearinghouse concept was only a one-year study—not the establishment of the clearinghouse. The creation of another bureaucracy will only further hamper water transfers.

#### **Transferring Return Flow/Tailwater**

What is conserved water?

How can CalFed define conserved water in its Water Use Efficiency Element and then not permit the transfer of that water in its Water Transfer Element? CalFed must recognize that financial incentives are necessary to implement conservation practices.

CalFed can not apply the “no injury” rule across the board to all transfers of return flow/tailwater. It is not for CalFed to re-analyze and improperly apply the “no injury” rule. There is an existing state law process already in place. CalFed states the problem, but does not deal with it. There is no solution from CalFed—they simply pose the problem for the rest of California to solve:

“ ... others believe that the determination of consumptive use values and the application of the “no injury” rule is not sufficiently rigorous and results in permitted transfers that injure other downstream legal water users, particularly in terms of flow timing and water quality.

There is not disagreement that water consumed by the crop (ET of applied water) is part of the consumptive use measure and, if foregone, is transferable. There is, however, some dispute about the transfer of surface water runoff (tailwater) that is not recaptured

and re-used, and that would otherwise be available to a downstream user. In other words, if it is permissible for the water user to recapture tailwater for his own use, thereby depriving the downstream user of its benefit, can the user reduce tailwater production by irrigation system improvements and transfer the saved water? Under most interpretations of current law, the "no injury" rule does not apply in the first case, but it does apply to water transfers when a water right change in place or purpose of use is required." (CalFed Water Transfer Program Plan, June 1999, pp. 3-9).

Interestingly, CalFed takes a "no comment" position with the above statement. CalFed appears to forget that in its own discussion paper on water transfers of July 17, 1997 @ page 6, CalFed determined that the "no injury" rule applicable to conserved water transfers should first be analyzed and the finding made that the "injury" is either significant, avoidable or acceptable. Certainly, conserving tailwater should be an acceptable method of developing water for transfer, but CalFed appears to have prejudged that issue with the above comment which is contrary to the CalFed Water Use Efficiency Plan Booklet which finds that return flow/tailwater is the most efficient use of agricultural water in the Sacramento Valley.

"Typically, losses associated with agricultural water use in this region tend to return to the system of rivers, streams and aquifers. Re-use of these losses is widely practiced. The region does not have significant irrecoverable losses, although water quality degradation does occur. Much of the regions groundwater resources are recharged by annual over-irrigation and deep percolation of applied water as well as subsurface inflow from the surrounding mountain ranges. This water is pumped by many of the areas agricultural lands that are irrigated solely with groundwater. In addition, tailwater from fields typically returns to streams and becomes part of the in-stream flow diverted from another farm, wetland or city somewhere downstream." (Draft Water Use Efficiency Program, June 1999, pp. 4-36).

In our opinion, we believe CalFed has reached a crossroads where it must determine whether it will stick with its direction of recognizing and honoring traditional water rights, or depart from it. If it wishes to respect California law of water rights (which the Exchange Contractors support), then its application of the "no injury rule" should not be applied to deprive an upstream appropriator, with senior rights, of the right to reduce its appropriation with aggressive conservation and thereby make other surface water available for transfer. To acknowledge protection of existing water rights and then to take away one of the significant elements as of that ownership—the right to transfer water otherwise conserved—is simply to negate the very water right protection policy that CalFed is pledged to protect.

How do we then provide for protection of downstream junior appropriators? One way of being protected is for a right of first refusal to be established in order to preserve the tailwater supply upon which they have historically relied. Another would be simply to consider the fact that preserving water and reducing tailwater supplies does not pose an "injury" to downstream appropriators, no matter what is done with the upstream supply. This is the position of any junior appropriator.

A substantial beneficiary of recapturing escaping tailwater is wildlife refuges and gun clubs. Again, perhaps as a matter of state policy, recognition has to be given that the water to provide those benefits does come at substantial cost. At some point, there is going to have to be a recognition of the economic value of this water, but the misapplication of the no injury rule proposed by CalFed will not achieve that.

The other significant point of interest is in the concept of a Water Resources Control Board proceeding to determine what is "transferable" water. As a practical matter, the Water Board is not able to apply its analysis to a pre-1914 water right to determine what is transferable without applying that analysis to what is not being transferred. We believe such a policy would needlessly expand SWRCB (CalFed) jurisdiction. For the Water Board to make a determination of a particular transferor's water supply for purposes of transfer, it will have to assess the overall water right which supports the transfer.

We believe that the districts which hold the water rights provide a public review process, complete with local Board review and approval and public input, which can address the concerns of available supply. It does not require the input of the Water Resources Control Board or CalFed or a state clearinghouse, or the dangerous expansion of jurisdiction such a review would entail.

We oppose this concept and believe that in those cases where a pre-1914 appropriative water right exists, the Water Board's jurisdiction remains as it has always been, the prevention of waste and unreasonable use, and the protection of public trust resources. It does not include the determination of what is transferable. The water right holder, through its authorized Board of Directors and/or governing body as the case may be, should make those determinations for pre-1914 rights.

#### **Encouraging Voluntary Water Transfers but Supporting a Reallocation of Water Rights in Phase 8 of the SWRCB's Water Right Proceeding**

\* Additionally, it seems that CalFed chooses to encourage water transfers and conjunctive use programs on a voluntary basis while the SWRCB, a member of CalFed, plans to reallocate water supplies in Phase 8 of the Bay-Delta process. The logic of giving up water supplies on a voluntary basis to aid farmers or urban users with insufficient water supplies, repel salinity in the Delta, assist endangered fish like the Delta smelt, winter-run chinook salmon, or striped bass is just not sustainable when threatened with the SWRCB's administrative taking of water supplies which we view as a property right and which have been reasonably and beneficially

used to produce agricultural products for over a century.

If the SWRCB has the power to reallocate water supplies, how does CalFed assume that public consensus will voluntarily develop to make the sacrifices, expend the funds, and take the steps that will have to be taken to undertake the CalFed Program with its projected cost of over \$5 billion. If a large base of the commentators on the CalFed Program, particularly environmental elements, have their assumptions enforced that water can simply be taken as a matter of a broad interpretation of the public trust doctrine, why would any substantial number of voters, tax payers, or other elements of society that must support the CalFed Program agree that such a program and its cost be undertaken?

Unless CalFed and the SWRCB recognize the property right aspect of water rights encumbered only by the reasonable and beneficial use restraint, then how can anyone from a willing seller's standpoint voluntarily engage in water transfers knowing that such transfers may be interpreted by the SWRCB in Phase 8 of its ongoing water right proceeding as a potential recognition that the water is unnecessary and subject to take under SWRCB's public trust jurisdiction. One must have the security of knowing what their rights are before one engages in a transfer of those rights. Any meaningful analysis of water transfers must review what impact the SWRCB's broad estimate of its public trust jurisdiction has on the feasibility of a viable water transfer marketplace.

#### **Water Storage Facilities are Needed**

CalFed needs to get behind the thought that the Delta water export system is only half built—it is not broken. Water transfers are merely a Band-Aid to a needed long-term fix, which must be developed through additional water storage. Unfortunately, it appears that the '99 CalFed EIS/EIR Ecosystem Restoration Program Plan does not seriously consider additional storage:

"CalFed is evaluating additional storage as one approach to increasing water supply reliability and providing in-stream flow benefits during periods of greater ecosystem need. ... new storage will be developed and constructed, together with aggressive implementation of water conservation, recycling and a protected water transfer market, as appropriate to meet CalFed Program goals.

During Stage I, CalFed will evaluate and determine the appropriateness of surface water and groundwater storage, identify acceptable projects and initiate permitting of construction if program linkages and conditions are satisfied." (CalFed Ecosystem Restoration Program Plan Volume 1, June 1999, pp. 11-12).

Storage is critical to the success of any long-term CalFed Project. The population in California is projected to exceed 47 million by the year 2020. ('99 CalFed EIS/EIR: Strategic



Plan for Ecosystem Restoration: Appendix "A": Opportunities and Constraints @ pg. A-13). Water storage facilities must be constructed and operable by at least 2005 in order to help bridge the gap between population increase and water demand. CalFed must support selected sites, whether on-stream or off-stream, for construction of new storage facilities. For instance, the 29,600-acre Sites/Colusa Project having the storage capacity estimated at 3 million acre feet was chosen a number of years ago. What about an enlarged Friant Dam, or increased storage above Friant?

## 2. WATER RIGHTS

The '99 CalFed EIS/EIR is biased in favor of environmental water supply reliability at the expense of all other beneficial uses.

Appendix "A" to the Ecosystem Restoration Program Plan, Strategic Plan for Ecosystem Restoration at A-1 reeks with a return to nature approach which is simply contrary to law and logic given the economics of the pre-1914 water rights system which was authorized in California to allow for the development of real property for agricultural production and ensures the stability of property rights given the tremendous population increases and land use changes which this state continues to endure. It's almost as if Appendix "A" would turn this state back 150 years to a date when "cattle were introduced in 1870 and rapidly expanded under Spanish rule." (Appendix "A", pg. A-7).

The '99 CalFed EIS/EIR Strategic Plan for Ecosystem Restoration, Appendix "A" continues to avoid discussion of compliance with water rights and water contracts. Instead, we find the following:

"IMPORTANT LEGISLATIVE ACTIONS AFFECTING ENVIRONMENTAL TRENDS - 1995 WATER QUALITY CONTROL PLAN: In 1995, the SWRCB adopted a water quality control plan for the Bay-Delta that includes rules governing Delta exports and Delta outflows. This plan intended to maintain salinity in the Delta at levels needed to maintain the health of the ecosystem. Since 1995, it has been the responsibility of CVP and the State Water Project (SWP) to comply with these rules, but SWRCB is now holding hearings to decide how the responsibility for compliance should be allocated among all water users in the Bay-Delta System. The result of these hearings will most likely lead to increases in in-stream flows in most, if not all, of the tributaries to the Delta. This change would improve conditions for fish and other aquatic species in those tributaries." (emphasis added) (Appendix "A", pg A-15).

The SWRCB is one of the 15 state and federal agencies participating in CalFed. Now we have CalFed pre-judging the Bay-Delta Water Right Hearings by making the statement underscored

1062(10)

in the above quotation which tells us that the reallocation of water rights and water supplies which will increase in-stream flows in tributaries to the Delta is going to happen. If the SWRCB as one of the 15 agencies participating in CalFed is making this comment, why do we need Phase 8 of the Bay-Delta Hearings if CalFed, of which the SWRCB is a member, knows the result?

It is also interesting to note that chapter 8 of the '99 draft EIS/EIR entitled "Compliance With Applicable Laws, Policies, Plans and Regulatory Framework" spends 27 pages discussing every law and regulation which supposedly applies to the CalFed Program including public trust (the 1983 National Audubon Decision) and the Racanelli Decision (U.S. v. SWRCB-1986) but fails to discuss either SWRCB D990 or D1275 which permitted the United States Central Valley Project and the State of California State Water Project respectively to build Shasta Dam and Oroville Dam provided that the federal and state entities be responsible for water flow, water quality, and fish and wildlife flow objectives within the Bay-Delta.

Regardless of the existence of the state and federal projects, the CalFed EIS/EIR Program documents continue to ignore federal and state responsibilities and the property right aspect of California's long established water right system. In essence, CalFed refuses to recognize that people reasonably and beneficially acquired and used water supplies to produce crops for people and that California's economy was historically developed and is dependent upon the continuation of this supply. California is the 7<sup>th</sup> largest agricultural producing entity in the world.

Perhaps it is CalFed's failure to mention D990 and D1275 which continues this attitude that all California streams, rivers and tributaries, and not just the federal and state projects as required by D990 and D1275, must contribute water for in-stream uses (Delta outflow). The June 1999 documentation does not change its definition of "Delta outflow" as being the total stream flow from tributaries minus reservoir storage and water diversions. Indeed, CalFed continues the assumption that reservoir storage was not a fact of Delta out-flow when, in fact, D990 and D1275 allowed the building of the federal and state reservoir storage projects on the condition that both reservoir storage projects would be a contributor to Delta outflow as necessary to preserve Delta water quality.

The CalFed documentation and program goals must recognize that existing land and water development have maintained streams, tributaries and rivers for the benefit of existing wildlife vegetation, fish and waterfowl. To do otherwise is to contradict existing water right law and continue to foster this illogical position of a return to nature approach of dealing with rapidly increasing urban growth, a population estimate in California which exceeds 47 million by the year 2020, increased commercial harvest of California's fisheries, and the continued introduction of non-native fish species into the Bay-Delta estuary.

CalFed also fails to describe a further very important water element: that of developed groundwater. While your program document describes riparian and appropriative water rights, it fails to describe groundwater right law in California, the California correlative rights rule,

which entitles each overlying landowner to a fair and just portion of a common groundwater pool. CalFed must explain that there is a difference between out of basin and in-basin groundwater pumpers in California such that all in-basin pumpers are subject to the correlative rights rule but out of basin pumpers are subject to the appropriative rights rule which requires that two conditions be met: (1) there must be surplus water which is defined as water in excess of the safe annual yield as described in City of Los Angeles v. City of San Fernando, (1975) 14 Cal. 3d 199; and, (2) surplus water must not be needed by overlying landowners.

### 3. ESTIMATED CALFED STAGE 1 COSTS

The Exchange Contractors are opposed to CalFed's proposal which would apply a fee upon water users. We remain concerned that without committing to construct and install another water supply source for storage north or south of the Delta CalFed will begin implementing a financing plan proposed at in excess of \$5 million.

Your finance program intends to implement new legislation to establish water user fees which, with implementing legislation, will presumably have a benefit analysis and cost allocation which will apportion fees and costs to pay for CalFed program costs. How does CalFed propose to measure these costs? Do you propose a water right holder diversion fee like the \$5 per acre/foot fee which was proposed in 1992 by D1630? We understand that this is just a Programmatic EIS/EIR but since you want to have a financing plan in place at the time you sign the Record of Decision by June of 2000 we feel it is appropriate to ask these questions.

### CONCLUSION

We conclude our comments by asking the following questions:

1. **Water User Fees/Diversion Fee/Tax.** The revised Phase II Report and certain portions of different supporting program documents generally describe a financing plan to accumulate over \$5 billion to finance the CalFed Program. Are the diversion fees, water user fees, etc. imposed on: (a) existing water right holders; (b) exporters; (c) urban users; (d) environmental in-stream users or those who benefit from environmental in-stream uses; (e) fishermen; or (f) the more than 34 million people now living in California? What is the amount of the fees? Are they annual?
2. **The Beneficiary Pays.** Who are the beneficiaries of the CalFed Program? Are they environmental in-stream users or those who benefit from such uses? Are they landowners, water diverters, water right holders, urban users, all living persons in California? Can you measure or define the term "beneficiary" by the proportionate responsibility in causing some decline in the Bay-Delta Ecosystem? Do you foresee giving a "beneficiary" the right to respond to some proposed cost which is imposed upon him/her/it as a beneficiary of the CalFed action and conduct?


1062(12)

3. **Conserved Water and Water Transfers.** Explain how you would apply your water transfer criteria to implement the "no injury rule" and prohibit the historic practice of transferring conserved water as an efficient method of irrigation in the agricultural sectors. Please explain how a clearinghouse facilitates water transfers as opposed to merely creating a redundant bureaucracy.

4. **Water Storage.** Since CalFed has chosen to allocate only 70 million of its proposed \$5 billion funding estimate for this CalFed Program to investigate water storage, explain or justify refusing to recommend construction and operation of storage facilities either north or south of the Delta given your own estimates that California will exceed 47 million people by the year 2020 and there is a strong likelihood that water export above that needed to meet the Exchange Contract obligation, increased commercialization of fisheries and continued introduction of introduced species in the Delta will continue.

Thank you for providing the Exchange Contractors and its members the opportunity to comment.

Very truly yours,

  
Steve Chedester  
Executive Director

/SC

cc: Central California Irrigation District  
Columbia Canal Company  
Firebaugh Canal Water District  
San Luis Canal Company  
Secretary of State Bill Jones  
Assemblymember Dennis Cardoza  
Senator Dick Monteith  
Senator Jim Costa  
Congressman George Radanovich  
Congressman Gary Condit  
Congressman Calvin Dooley  
Senator Barbara Boxer  
Senator Dianne Feinstein  
Kirk Rodgers, Acting Regional Director USBR  
Steve Hall, ACWA  
Allen Short, San Joaquin River Group Authority